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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 292 JOHN HENRY BRUNSON, Petitioner,

vs.

STATE OF NORTH CAROLINA, Respondent.

No. 293 ESSIE KING, Petitioner,

vs.

STATE OF NORTH CAROLINA, Respondent.

No. 294 MARTHA JONES, Petitioner,

vs.

STATE OF NORTH CAROLINA, Respondent.

No. 295 LOUISE JAMES (Alias MOORE), and EVELYN CHILDS, Petitioners,

vs.

STATE OF NORTH CAROLINA, Respondent.

No. 296 LIDA MAE WATKINS, CELIA ANN PURCELL, JAMES EDWARD STURDIVANT, and LOUVENIA WALLACE, Petitioners,

vs.

STATE OF NORTH CAROLINA, Respondent.

On Writs of Certiorari to the Supreme Court of the State of North Carolina.

BRIEF OF THE STATE OF NORTH CAROLINA, RESPONDENT.

STATEMENT OF THE CASE

The petitioners were convicted of various misdemeanors in the Municipal Court of the City of Winston-Salem in

Forsyth County, North Carolina. The petitioners appealed to the Superior Court of Forsyth County where they were again tried in October, 1946; and from convictions in this Court, the petitioners appealed to the Supreme Court of North Carolina. The opinions of the Supreme Court of North Carolina in these five cases are reported as follows: STATE v. JOHN HENRY BRUNSON, 227 N. C. 558, 43 S. E. (2d) 82; STATE v. ESSIE KING, 227 N. C. 559, 43 S. E. (2d) 82; STATE v. MARTHA JONES, 227 N. C. 561, 43 S. E. (2d) 82; STATE v. LOUISE JAMES (Alias Moore) and EVELYN CHILDS, 227 N. C. 558, 43 S. E. (2d) 83; STATE v. LIDA MAE WATKINS, CELIA ANN PURCELL, JAMES EDWARD STURDIVANT, and LOUVENIA WALLACE, 227 N. C. 560, 43 S. E. (2d) 83.

So far as the opinions of the Supreme Court of North Carolina in these five cases are concerned, they refer to the opinion of the Supreme Court of North Carolina in STATE v. KORITZ, ET AL, 227 N. C. 552, 43 S. E. (2d) 77; and it is stated that the KORITZ case, and rulings therein contained, shall be controlling and decisive of these cases. Petition for writ of *certiorari* in the KORITZ case (No. 234) was denied by this Court on October 13th, 1947. In these five cases (Nos. 292, 293, 294, 295, 296), the petitions for writs of *certiorari* from the United States Supreme Court to the Supreme Court of North Carolina were granted December 15th, 1947.

Aside from the fact that there are different petitioners, the Records in these cases are identical; and the parties have agreed that the Record in the BRUNSON case, No. 292, may be considered by the Court in hearing and deciding all five cases, and, likewise, the briefs filed in the BRUNSON case may be considered in behalf of all the cases.

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FACTS

All of the petitioners were convicted in the Municipal Court of the City of Winston-Salem of various misdemeanors growing out of a labor dispute. The petitioners all appealed to the Superior Court of Forsyth County, where they were again convicted; and upon their appeals to the Supreme Court of North Carolina, judgments of the Superior Court of Forsyth County were affirmed.

Petitioner, Brunson, was convicted of assaulting, beating and wounding a woman, Christine Davis, the petitioner being a man over eighteen years of age.

Petitioner, Essie King, was convicted of disorderly conduct in that she engaged in fighting, cursing and disorderly conduct calculating to invoke a breach of the peace.

Petitioner, Martha Jones, was convicted on a charge of disorderly conduct in that she engaged in loud and boisterous cursing, using obscene language and engaging in other conduct calculating to invoke a breach of the peace.

Petitioner, Louise James (Alias Moore), was convicted on a charge of wanton and malicious injury to the property of Annie Blanton by throwing a rock through a window.

Petitioner, Lida Mae Watkins, was convicted on four charges:

(a) Assaulting, beating and wounding Ethel Crews with a deadly weapon, a stick.

(b) Assaulting, beating and wounding G. W. Lancaster with a deadly weapon, a stick.

(c) Hindering, delaying and resisting police officers in the discharge of their official duties.

(d) Assaulting, beating and wounding R. F. Holcomb with a deadly weapon, a stick.

Petitioner, Celia Ann Purcell, was convicted of assault-

ing, beating and wounding Estelle Britt with a deadly weapon, a stick.

Petitioner, James Edward Sturdivant, was convicted of assaulting, beating and wounding Estelle Britt, he being a man over eighteen years of age.

Petitioner, Louvenia Wallace, was convicted of assaulting, beating and wounding Estelle Britt.

The petitioners received various sentences as shown on page 5 of their brief except it is stated that Lida Mae Watkins received a sentence of fifty-one months in the County Jail. A reference to Record No. 728, certified by the Supreme Court of North Carolina to this Court on petition for *certiorari*, will show, on pages 60 and 61, that this petitioner received a sentence of twelve months and that the Court ordered that all of the sentences in her other cases should run concurrently with the sentence of twelve months.

The petitioners filed motions to quash the warrants and discharge the trial jury and grand jury as shown on page 4 of the Record. The trial judge made findings of fact in each case to the effect that there was no discrimination in the selection of the jury in regard to color or religion and overruled petitioners' motion to quash. Upon the motion to quash, the petitioners and the State offered evidence as to the administrative method used in selecting the jury. The petitioners never, at any time, raised any question as to the sufficiency of the allegations in the warrants nor as to the sufficiency of the evidence to support the verdicts.

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ARRANGEMENT OF BRIEF

It is the contention of the respondent that the exceptions relied upon by the petitioners fall within two categories; and stated from the respondent's point of view, these cases will be discussed under the following headings:

I.

There was no intentional, arbitrary and systematic exclusion of eligible persons of petitioners' race from jury service by the Board of Commissioners of Forsyth County, North Carolina; and, therefore, there was no violation of the equal protection and due process clauses of the Fourteenth Amendment of the Constitution of the United States. The Supreme Court of North Carolina committed no error in affirming the action of the trial court in overruling petitioners' motion to quash the warrants and discharge the petit jury in these cases.

II.

The North Carolina statutes regulating the selection and qualification of jurors are constitutional and do not violate the Fourteenth Amendment of the Constitution of the United States. The conviction of petitioners by a petit jury made up and selected under these statutes is valid and is not in violation of the Fourteenth Amendment.

We do not discuss petitioners' subdivision III other than to here state that under our practice and the Constitution of North Carolina, it was proper to try the petitioners on the warrants issued in the Municipal Court of Winston-Salem. It was not necessary, therefore, for the Grand Jury to find indictments against the petitioners. Our Constitution, Article I, Section 12, provides: "No person shall be put to answer any criminal charge except as hereinafter

allowed, but by indictment, presentment, or impeachment." It is likewise provided in Article I, Section 13, that: "No person shall be convicted of any crime but by the unanimous verdict of a jury of good and lawful men in open court. The Legislature may, however, provide other means of trial for petty misdemeanors, with the right of appeal."

These provisions have been held by the Supreme Court of North Carolina to dispense with the necessity of finding a bill by the Grand Jury and have been declared to be valid and constitutional.

State v. Shine, 222 N. C. 237, 22 S.E. (2d) 447;
State v. Lytle, 138 N. C. 738, 51 S.E. 66.

The State has a right to devise its own criminal procedure, and the substitution of a warrant for an indictment found by the Grand Jury is constitutional under the Fourteenth Amendment. See HURTADO v. CALIFORNIA, 110 U. S. 516, 28 L. ed. 232. It is our contention, therefore, that so much of the motion to quash, as deals with the method of selecting the Grand Jury, is not at issue in this case.

Referring to the procedure used by the petitioners, motion to quash, to raise the constitutional questions presented in this case, respondent contends that the Supreme Court of North Carolina did not hold that the petitioners had failed to invoke the proper procedure to challenge the validity and constitutionality of the method used in selecting petit juries. The Supreme Court of North Carolina held that in order to present an exception on rulings to challenge to the polls, it was required to exhaust peremptory challenges and then attempt to challenge another juror. At any rate, irrespective of any possible difference between a motion to discharge the petit jury and a challenge to the array under our practice, it is admitted by the respondent

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that so far as this case is concerned, the petitioners have used the proper procedure to raise the constitutional questions here presented and that the Supreme Court of North Carolina did decided these constitutional questions adversely to the petitioners.

ARGUMENT

I.

THERE WAS NO INTENTIONAL, ARBITRARY AND SYSTEMATIC EXCLUSION OF ELIGIBLE PERSONS OF PETITIONERS' RACE FROM JURY SERVICE BY THE BOARD OF COMMISSIONERS OF FORSYTH COUNTY, NORTH CAROLINA; AND, THEREFORE, THERE WAS NO VIOLATION OF THE EQUAL PROTECTION AND DUE PROCESS CLAUSES OF THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES. THE SUPREME COURT OF NORTH CAROLINA COMMITTED NO ERROR IN AFFIRMING THE ACTION OF THE TRIAL COURT IN OVERRULING PETITIONERS' MOTION TO QUASH THE WARRANTS AND DISCHARGE THE PETIT JURY IN THESE CASES.

There is no dispute about the law governing the constitution of juries in relation to the 14th Amendment. The intentional, arbitrary and systematic exclusion of colored persons from jury service on the trial panel because of race is a discrimination prohibited by the 14th Amendment.

Perhaps it can be stated that when a Negro defendant is deprived by design of the chance of having Negroes on the jury, then the Fourteenth Amendment to the United States Constitution may be invoked for his protection.

Strauder v. West Virginia, 100 U.S. 303, 25 L. ed. 664;
Norris v. Alabama, 294 U.S. 587, 79 L. ed. 1074;
Hollins v. Oklahoma, 295 U.S. 394, 79 L. ed. 1500;
Hale v. Kentucky, 303 U.S. 613, 82 L. ed. 1052;
Pierre v. Louisiana, 306 U.S. 354, 83 L. ed. 757;
Smith v. Texas, 311 U.S. 128, 85 L. ed. 84.

In AKINS v. TEXAS, 325 U. S. 398, 89 L. ed. 1692, the Court uses the words "purposeful discrimination." In NORRIS v. ALABAMA, supra, the Court uses the words "long-continued, unvarying, and wholesale exclusion of Negroes from jury service."

It is very generally held that the burden of proof is on the defendant or defendants to show an alleged discrimination in the selection of a grand or petit jury.

Akins v. Texas, 325 U.S. 398, 89 L. ed. 1692;
Murray v. Louisiana, 163 U.S. 101, 41 L. ed. 87.

There is a presumption that officers in charge of the selection and summoning of a jury or jury panel will be presumed to have performed their duty fairly and justly without discrimination against any race or class. In other words, discrimination in the selection of a jury will not be presumed.

Tarrance v. Florida, 188 U.S. 519, 47 L. ed. 572, 116 So. 470 (Fla.). (Certiorari denied in 278 U.S. 599, 73 L. ed. 525.)

Fairness in selection has never been held to require proportional representation of races upon a jury.

Akins v. Texas, 325 U.S. 398, 89 L. ed. 1692;
Virginia v. Rives, 100 U.S. 313, 25 L. ed. 667;
Thomas v. Texas, 212 U.S. 278, 53 L. ed. 512.

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A defendant has no constitutional right to be indicted or tried by any particular jury or by a jury composed in part of members of his race or class.

State v. Peoples, 131 N.C. 784, 42 S.E. 814;
State v. Sloan, 97 N.C. 499;
State v. Logan, 341 Mo. 1164, 111 S.W. (2d) 110; (1937);
Martin v. Texas, 200 U.S. 316, 50 L. ed. 494.

"It is unsafe, we think, to attach too much significance to abstract, mathematical ratios or to the so-called law of recurrences in determining whether there has been arbitrary discrimination in the selection of the juries."

Swain v. State, 215 Ind. 259, 18 N.E. (2d) 921,926.

The fact that in this case there were found separate lists with the word "colored" at the top of the page containing the list does not show discrimination.

State v. Walls, 211 N.C. 487, 191 S.E. 232 (1937); (distinguished by black ink and red ink);
State v. Middleton, 207 S.C. 478, 36 S.E. (2d) 742 (1946); (Negro juror distinguished by the letter "c").

The evidence in this Record shows that the Commissioners of Forsyth County did not put in the Jury Box all the names of eligible taxpayers of the white and colored races. It does not show any intentional, arbitrary, and systematic exclusion of colored persons from jury service, nor does it show purposeful discrimination. Respondent now desires to discuss some of the evidence since this Court reviews the facts in a case of this nature.

Margaret Bell: (R. p. 10) This witness works for the Winston-Salem Chamber of Commerce. Her evidence shows that according to the 1940 Census, Forsyth County had a population of 126,475 persons, of which approximately 45% were colored and 55% white. Her unofficial estimate for 1946 is 150,000 persons with 45% belonging to the colored race.

Virgil W. Joyce: (R. pp. 10, 11) This witness has been County Tax Supervisor since 1938. According to this witness, for the current year of 1946, there were 43,000 taxpayers; 32,500 are white and 4,000 colored; 2,500 firms, corporations and churches; 3,000 colored persons picked up from payrolls that pay poll taxes, and 1,000 white persons picked up for poll taxes.

Walter A. Mickle, County-City Tax Collector since July 1st, 1946, testified in part as follows:

> "Before I went in as Tax Collector, I was Deputy or Chief Deputy under Sheriff Shore from December, 1936, and as Chief Deputy it was part of my duties to handle the jury list and apportion the jurors to the various deputies and see that the jurors drawn were summoned.
>
> "I also assisted in the actual drawing of the jury and the preparation of the list until July 1946. I also assisted every odd two years in helping the Clerk of the Board of Commissioners in preparaing the jury scrolls that made up the jury list, by checking for dead, and people moved out of the county and other things. I would think that there are a proportionate amount of colored names in the box to the white, according to the tax scrolls of the County. I do not know of any colored man whose name has been drawn since the nine years I have been there, that was not summoned if he could be found. We have had quite a number in the last five years on the Grand Juries. I know of Artie

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Cash, Charlie Jeffries and a colored janitor at Frank Stith's and others. It is a fact that there are jurors, Negroes, on Petit Juries, both criminal and civil, that served. At the drawing of these juries, there has never been any juries drawn since I was connected with it, where there was not a child of less than 10 years of age there at the drawing of the jury lists. * * * *

" * * * * I have been present, representing the Sheriff's office, in the matter of drawing the jury by the Board of County Commissioners from December 1936, until June 1946. I did not take part in the deliberations of the Board of County Commissioners but was merely representing the Sheriff when he could not be there.

"I don't know the names of the five colored men that were summoned for service on the Grand Jury in the last five years but I remember that we had this year one colored man, Charlie Peebles, who I believe served the first six months of this year. During the past five years, beside Peebles, this Cash boy that the Solicitor mentioned and there are others whose names I don't recall right now.

"On the petit jury I don't recall anybody but I do know that Negroes have served but I don't recall their names. I don't know what names went into the jury box. I don't know the total number that went in there either. I had nothing to do with preparing the names that went into the jury box.

" * * * * I never heard any Commissioner discuss whether a man was black or white, that I remember, during the time I was in the office as Chief Deputy, at the drawing of the jury."

Ernie G. Shore, Sheriff of Forsyth County, testified in part as follows:

"I was present on a good many occasions when the jury lists were drawn by the Commissioners. On every

occasion that I was present, they had a child under 10 there to draw the list. The Board of Commissioners requested me to have a child there under 10 years old at each drawing. My Chief Deputy, Mr. Mickle, and I saw to that on each occasion. I never heard any statement made by any Commissioner, or inquiry made, as to whether a man drawn was white or black."

This witness thought there had only been twelve colored persons summoned since December 7, 1936 (R. p. 16). It should be noted, however, that his Chief Deputy, Walter Mickle, had the duty of seeing that jurors were summoned and apportioning the names among the various deputies for service. (R. p. 12). This witness testified that at the present Term of Court, no colored juror had been drawn or summoned (R. p. 16) whereas the Chairman of the Board of Commissioners testified on R. p. 30 that one colored juror, Jefferson H. Hairston, was drawn as a regular juror, was summoned and was serving on the Petit Jury. This witness did testify, on R. p. 23, that a Negro had been drawn for service at the next term of Court.

Gene Pratt, business agent for the Labor Union, testified:

"For 1941 there was produced by Mr. Lentz for our inspection and in our presence a separate list of jurors of the jury list which was marked 'colored' at the top. He stated that that was the state of the records of his office. For the year 1945 I examined the records produced there by Mr. Lentz and the jury list had a separate list marked 'colored.' I counted the total number of names on those typewritten sheets for white and colored for 1941. There was a total of 8,598 white names and 236 colored names, giving a grand total of 8,834 of both white and colored.

"I counted every name on the 1945 jury list of both white and colored and the total of those names for

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whites was 10,367 and the total for colored 255, making a grand total of 10,622 for both white and colored.

"I examined the typewritten pages of jury lists for each of the other years, namely, 1935, 1937, 1939 and 1943, and found that the total for each of these respective years would not vary more than 150 or 200 from the grand total of 10,622 for the year 1945.

"I have been in and out of the Forsyth County Superior Court about as much as the average person who did not have a case or was not an attorney and I have never yet seen a colored person sitting in the jury box. I do not know whether they were stood aside by lawyers or not. I do not know whether they were summoned here and begged to be excused or not for some good reason.

" • • • • On the jury lists that I saw in the Register of Deeds' office, I did see on that list 'colored' at the head of it. I am not certain whether the jury lists which I saw were the original lists or a copy thereof. There was nothing opposite each individual name on the jury list to show whether it was white or colored. The word 'colored' appeared only at the head of the paper.

"I do not say that the names on the other papers exclusive of those papers in the 1941 list marked 'colored' are not colored persons. There is nothing on any list at all except that list headed 'colored' persons that will designate a white man from a colored man."

The stipulation beginning on page 8 of the Record gives the details as to the jurors for various years as testified to by this witness.

James G. Haynes, Chairman of the Board of County Commissioners of Forsyth County, testified in part as follows: (R. pp. 26, 27)

"I am Chairman of the County Board of Commissioners of Forsyth County and have been since 1928.

In July of 1945, under the Statute, the Commissioners had the Clerk of the Board prepare and lay a scroll before them of the citizens and taxpayers of Forsyth County for the purpose of making up the jury list. To the best of our ability we checked the list and with the Clerk's help and the other people like Mr. Mickle and others, to find out who were dead and who had moved out of the county and who were people of good moral character.

"After preparing that scroll we had that placed in the box according to the law and before doing that I had the old names removed from the box. No questions were asked concerning whites and blacks. The lists were prepared and made up from the tax list record. That list was originally prepared from the actual tax cards in Mr. Vergil Joyce's office. They were turned over to Mr. Lentz and he was instructed to make the list from them. We have down here an IBM system where each taxpayer has a card and the original scroll that was turned over to Mr. Lentz was the running of every card that Mr. Joyce has in his office, and that was turned over. In the drawing of these lists, at no time did I or any other member of the Board ever discuss the qualifications of a juror as to whether he was white or colored. I do not know when I come to them whether they are white or colored unless I personally know the person. There is no red or black ink on any of them. They are all on black, I think.

"I do not have any independent knowledge as to the proportion of the white and colored in the box. All I know is that they are in there according to the proportion as they were on the tax list. We have a child under 10 who picks one out of the box and hands it to the Clerk. There is usually one of the Deputy Sheriffs or the Sheriff there, some man that he asks to act for him—who hands it to the first Commissioner. There are three of us at the table. After the first Commissioner inspects it he hands it to the second Commis-

sioner, and after the second Commissioner inspects it, he hands it to the third Commissioner, and after he inspects it he hands it to the stenographer, who writes the names.

"If any Commissioner knows that name is dead or has left the county or has been convicted of a felony, then I destroy that scroll. Otherwise the name goes on the list and every jury that I have ever attended was drawn in open session, the doors open, and people walk in and out constantly. There are a number of lawyers in town who have from time to time been present when we were drawing jurors. So if there had been any discussion as to who was to go in the box, as to the color, it would have been a matter of public record. There is usually, too, a newspaper reporter present when we are drawing it.

"As far as I know, Mr. Lentz has never reported to us any separate list for colored persons of 236 for 1941. They are all brought in and put in the box together. I have no information about a separate colored list of 255 names prepared in the biennial jury list of 1945. I have never asked Mr. Lentz to separate anything. I have turned them over to him with instructions to put them in the jury box. I would not know about two separate lists made up of white and colored. When they were brought in to us they were all in one basket, and we put all of them in the box. That is all I know. I didn't have anything to do with preparing the list.

" * * * There is one Negro juror, viz: Jefferson H. Hairston, whose name was drawn out of the regular county jury box and who was summoned by the Sheriff for service on the Petit Jury at this term and who is now serving."

It is submitted, therefore, that this evidence does not show purposeful and intentional discrimination as to the colored race. Accepting the petitioners' own figures, it

merely shows that eligible persons of both races were not put into the jury box, 13,083 white taxpayers and 4,645 colored taxpayers. If this is discrimination, then it is discrimination against both races. The petitioners strongly emphasize the percentage of white taxpayers not placed in the box as opposed to the larger percentage of colored taxpayers not placed in the box. On the other hand, those who have made the mathematical calculations tell us that if we accept the petitioners' tables as showing correctly the number of total taxpayers and the division into white and colored taxpayers and calculate mathematically a fixed ratio of colored to white that should appear on a venire of thirty men drawn for any term of Court, the percentage of colored representation would be 4.42. If we make the same calculation on a panel of twelve men and give the Negro race fixed representation on the panel according to their race as compared to the white race, there would be on each panel of twelve, 1.8 Negroes. If we make this same calculation on the basis of both white and colored, which petitioners say were actually in the jury box, then there would be on each panel of thirty jurors drawn for each week of Court 1.7032 Negroes, or roughly seven-tenths. The same calculation applied to each panel of twelve jurors would give .276, or roughly one-quarter of a colored man on a panel of twelve. The Clerk of the Superior Court testified that a panel of thirty jurors was drawn for each week of Court. (R. p. 20). This demonstrates the inconclusiveness of mathematical arguments on questions of discrimination, especially when we remember that the colored race, or for that matter no race, is entitled to fixed ratios of representation on a jury; but each race is entitled to its chance to be on the jury without discrimination. At this point, it should be recalled that the Chairman of the Board of County Com-

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missioners testified that at the term of Court in which these petitioners were being tried, there was a colored man serving on the Petit Jury although it does not appear that he was tendered as a juror on the particular trial panels that tried petitioners. Petitioners' own witness, Walter A. Mickle, who handled the jury list for several years and directed the various deputies to see that the jurors were summoned, testifies (R. p. 12) that all colored jurors whose names have been drawn have been summoned and that quite a number of colored people have served on grand juries in the last five years. He further states that Negroes have served on petit juries in both criminal and civil cases. We, therefore, do not have here the long-continued, unvarying and wholesale exclusion of Negroes from jury service presisting over many years which has been shown in nearly all of the cases cited by petitioners and upon which they rely.

In HILL v. TEXAS, 316 U. S. 400, 86 L. ed. 1559, a motion to quash the indictment was filed because of exclusion of Negroes from grand jury service. It appeared that there were many eligible Negro jurors but that no Negro had been on the grand jury list for sixteen years or more. The Assistant District Attorney for Dallas County testified that he never knew of a Negro being called to serve on a grand jury in the County. A colored witness, engaged in the insurance and bonding business and a resident of the County for fifty-four years, testified that he had never known of any colored man to be called as a grand juror. There were other witnesses to the same effect. This was held to make out a *prima facie* case of racial discrimination as to the service of Negroes on the grand jury.

In PIERRE v. LOUISIANA, 306 U. S. 354, 83 L. ed. 757, the petitioner filed a motion to quash the grand jury panel

and the petit jury panel because of race discrimination. The evidence showed that from 1896 until 1936, no Negro had served on the grand or petit juries in the Parish. The list for 1937 had only one Negro, and he was the only Negro who had ever been called for jury service in the memory of the Clerk. Approximately one-half of the population of this Parish was made up of Negroes, and it was shown that there were many Negroes eligible for jury service. This Court sustained the motion to quash, saying that this evidence created a strong *prima facie* showing of systematic exclusion because of race.

In NEAL v. DELAWARE, 103 U. S. 370, 26 L. ed. 567, a motion to quash on the grounds of race discrimination was sustained, it appearing that no colored citizens had ever been summoned as a juror in the Courts of the State although its colored population exceeded 20,000 in 1870 and in 1880 exceeded 26,000 in a total population of less than 150,000. This was held to raise a presumption of race exclusion.

In NORRIS v. ALABAMA, 294 U. S. 587, 79 L. ed. 1074, it was shown that there were Negroes qualified for jury service. It appeared that no Negro had served on any grand or petit jury within the memory of witnesses who had lived there all their lives. A member of the Commission which made up the jury roll for the grand jury, which found the indictment, testified that he had "never known of a single instance where any Negro sat on any grand or petit jury in the entire history of that county." Such testimony was held, by this Court, to make out a *prima facie* case of denial of the equal protection which the Constitution guarantees. There was also a question about the genuineness of the entries of the names of six Negroes on the jury rolls, the question being whether there were in fact any names of

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Negroes on the jury roll. On the question of the trial panel in Morgan County, the evidence was that in the memory of witnesses long resident in that County, no Negro had ever served on a jury in that County or had been called for such service. Some of these witnesses were over fifty years of age and had always lived in Morgan County.

In SMITH v. TEXAS, 311 N. C. 128, 85 L. ed. 84, the facts in regard to the jury service of colored jurors was as follows:

> "The court clerk, called as a state witness and testifying from court records covering the years 1931 through 1938, showed that only 5 of the 384 grand jurors who served during that period were Negroes; that of 512 persons summoned for grand jury duty, only 18 were Negroes; that of these 18, the names of 13 appeared as the last name on the 16 man jury list, the custom being to select the 12 man grand jury in the order that the names appeared on the list; that of the 5 Negroes summoned for grand jury service who were not given the number 16, 4 were given numbers between 13 and 16, and 1 was number 6; that the result of this numbering was that of the 18 Negroes summoned, only 5 ever served, whereas 379 of the 494 white men summoned actually served; that of 32 grand juries empanelled, only 5 had Negro members, while 27 had none; that of these five, the same individual served 3 times, so that only 3 individual Negroes served at all; that there had been no Negroes on any of the grand juries in 1938, the year petitioner was indicted; that there had been none on any of the grand juries in 1937; that the service of Negroes by years had been: 1931, 1; 1932, 2; 1933, 1; 1934, 1; 1935, none; 1936, 1; 1937, none; 1938, none."

While the facts show that some Negroes served on the grand jury, nevertheless, it appears that Negroes were as-

signed high numbers on the jury list; and the custom of selecting the grand jury in the order in which the names appeared on the list virtually excluded Negroes from service. This was undoubtedly one of the controlling factors in this decision, where it is stated in the opinion as follows:

> "Nor could chance and accident have been responsible for the combination of circumstances under which a Negro's name, when listed at all, almost invariably appeared as number 16, and under which number 16 was never called for service unless it proved impossible to obtain the required jurors from the first 15 names on the list."

In PATTON v. MISSISSIPPI, 92 L. ed. 164 (No. 4, Advance Opinions), there were Negroes qualified to serve as jurors in the county. The evidence showed, without contradiction, that no Negro had served on the grand or petit court juries for thirty years or more. During this period, one Negro had been summoned; but for some undisclosed reason, he had not served. It was held by this Court that the State had failed to meet the strong evidence of purposeful, racial discrimination.

The case of ROGERS v. ALABAMA, 192 U. S. 226, 48 L. ed. 417 was decided upon procedural questions; and the degree of exclusion of colored jurors does not appear in the case.

The case of MARTIN v. TEXAS, 200 U. S. 316, 50 L. ed. 497 discloses a situation where the defendent filed written motions but did not offer any evidence to support the motions, this Court holding that verified motions could not be used as evidence to establish the facts alleged in the motions.

While we do not question the legal principles set forth in the above cases, we have commented upon them for the

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purpose of showing that they were decided upon facts entirely different from the controlling facts in this case. Under the facts in this case, therefore, we do not think that any *prima facie* case or presumption of exclusion arises and that the petitioners have failed to meet the burden required of them. A mere showing that members of both races eligible for jury duty are not in the box and that the eligible number of colored taxpayers exceeds the eligible number of white taxpayers on a percentage basis does not show purposeful discrimination. There is no showing that a designation of race appears on the IBM cards delivered to the Commissioners for the purpose of preparing the jury list. The fact that for the years of 1941 and 1945 there were lists found with the designation "colored" at the top of the lists does not show discrimination. There is no evidence that there were not names of colored people on the other jury lists, or to state the proposition affirmatively, there is no evidence that all of the other jury lists were names of white jurors. This designation is resorted to many times so the officer summoning the juror will know approximately in what neighborhood to find him. In fact, if the jury officials wished to discriminate intentionally, the easiest way to have done it would have been to have made no designation at all.

Respondent contends, therefore, that the petitioners have not met the burden imposed upon them and as required by the principles stated in the case of FAY v. NEW YORK, 91 L. ed. 1517 (No. 17, Advance Opinions) where this Court said:

> "It is fundamental in questioning the composition of a jury that a mere showing that a class was not represented in a particular jury is not enough; there must be a clear showing that its absence was caused

by discrimination, and in nearly all cases it has been shown to have persisted over many years. Virginia v. Rives, 100 US 313, 322, 323, 25 L ed 667, 670, 671; Martin v. Texas, 200 US 316, 320, 321, 50 L ed 497, 498, 499, 26 S Ct 338; Thomas v. Texas, 212 US 278, 282, 53 L ed 512, 513, 29 S Ct 393; Smith v. Texas, 311 US 128, 85 L ed 84, 61 S Ct 164; Hill v. Texas, 316 US 400, 86 L ed 1559, 62 S Ct 1159; Akins v. Texas, 325 US 398, 89 L ed 1692, 65 S Ct 1276, supra. Also, when discrimination of an unconstitutional kind is alleged, the burden of proving it purposeful and intentional is on the defendant. Tarrance v. Florida, 188 US 519, 47 L ed 572, 23 S Ct 402; Martin v. Texas, 200 US 316, 50 L ed 497, 26 S Ct 338; Norris v. Alabama, 294 US 587, 79 L ed 1074, 55 S Ct 579; Snowden v. Hughes, 321 US 1, 8, 9, 88 L ed 497, 502, 503, 64 S Ct 397; Akins v. Texas, 325 US 398, 400, 89 L ed 1692, 1694, 65 S Ct 1276."

Under the North Carolina practice, the questions raised by the petitioners' motion to quash are in the first instance heard and decided by the trial Court. The trial Court makes findings of fact; and in the absence of an abuse of discretion or in the absence of lack of evidence to support findings, such decision of the trial Court is ordinarily binding upon the Supreme Court. This practice is illustrated by the following cases:

State v. Henderson, 216 N.C. 99, 3 S.E. (2d) 357;
State v. Bell, 212 N.C. 20, 192 S.E. 852;
State v. Walls, 211 N.C. 487, 191 S.E. 232;
State v. Cooper, 205 N.C. 657, 172 S.E. 199;
State v. Lord, 225 N.C. 354, 34 S.E. (2d) 205.

While it is recognized by respondent that on a question of this kind, this Court will examine the facts and evidence to see if fundamental constitutional rights have been denied, nevertheless, great weight is accorded to the de-

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cisions of state courts who make the initial decisions and have a better opportunity to investigate the facts.

Thomas v. Texas, 212 U.S. 278, 53 L. ed. 512;
Akins v. Texas, 325 U.S. 398, 89 L. ed. 1692.

In THOMAS v. TEXAS, *supra*, this Court said:

> "As before remarked, whether such discrimination was practised in this case was a question of fact, and the determination of that question adversely to plaintiff in error by the trial court and by the court of criminal appeals was decisive, so far as this court is concerned, unless it could be held that these decisions constitute such abuse as amounted to an infraction of the Federal Constitution, which cannot be presumed, and which there is no reason to hold on the record before us. On the contrary, the careful opinion of the court of criminal appeals, setting forth the evidence, justifies the conclusion of that court that the Negro race was not intentionally or otherwise discriminated against in the selection of the grand and petit jurors. Indeed, there was a Negro juror on the grand jury which indicted plaintiff in error, and there were Negroes on the venire from which the jury which tried the case was drawn, although it happened that none of them were drawn out of the jury box."

In AKINS v. TEXAS, *supra*, this Court said:

> "As will presently appear, the transcript of the evidence presents certain inconsistencies and conflicts of testimony in regard to limiting the number of Negroes on the grand jury. Therefore, the trier of fact who heard the witness in full and observed their demeanor on the stand has a better opportunity than a reviewing court to reach a correct conclusion as to the existence of that type of discrimination. While our duty, in reviewing a conviction upon a complaint that the procedure through which it was obtained violates due

process and equal protection under the Fourteenth Amendment, calls for our examination of evidence to determine for ourselves whether a Federal constitutional right has been denied, expressly or in substance and effect, Norris v. Alabama, 294 U. S. 587, 589, 590, 79 L. ed. 1074, 1076, 1077, 55 S. Ct. 579; Smith v. Texas, 311 U. S. 123, 130, 85 L. ed. 84, 86, 61 S. Ct. 164, we accord in that examination great respect to the conclusion of the state judiciary, Pierre v. Louisiana, 306 U. S. 354, 358, 83 L. ed. 757, 760, 59 S. Ct. 536. That respect leads us to accept the conclusion of the trier on disputed issues 'unless it is so lacking in support in the evidence that to give it effect would work that fundamental unfairness which is at war with due process'."

In the case of STATE v. WALLS, 211 N. C. 487, 191 S.E. 232, the following are the facts with reference to alleged discrimination as taken from the opinion of the Court:

"The court below found: 'Motion to quash the bill of indictment is denied and the court finds as a fact there are approximately 10,000 names of the white race in the jury box and something over 600 names of the colored race in the jury box, and at this term of court there is one colored man on the grand jury that returned a true bill in this case, and that there has been no discrimination against the defendant.'

"The clerk of the board of county commissioners testified: 'The scrolls containing the colored race, approximately 650 in number, are still in red ink and the scrolls containing the names of the white race are in black ink. That condition existed at the time it was done in red and black ink so as to distinguish them, so they would know whether to look for a white man or a colored man. There is no discrimination in the selection of names; when a child draws a name out we put the name on the jury list, have a colored man on the grand jury now. There is no discrimination in the

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selection of the grand jury or petit jury. When the names are called out I put them on the list to give the sheriff to be summoned for jury service. We have been using a four-year-old child and if the name comes out red or black it is put on the list. The purpose in two different colors of ink is to see who to look for. It makes it easier to look for them. . . . There are about 650 names of the colored race and approximately 10,000 whites. There is one colored man on the grand jury now who found this bill. Q. In drawing the jurors at former terms was a colored man on the petit jury? Ans: Yes, sir, ever since last year we have had colored men drawn and on the civil jury frequently. I do not know how many. Q. Regardless of how many were drawn there was not but one colored man drawn this last time? Ans.: Yes, there were two. That is all that came out of the box; it should average about two out of thirty if the average is kept up'."

In the disparity between the number of white and colored jurors; the designation of colored jurors by red ink; the fact that one colored juror served on the Grand Jury, and the finding made by the trial judge, this case (WALLS) and the case now before the Court are analogous. The experience of the county in the service of colored jurors is not given. This Court dismissed the appeal, treated the appeal as a petition for a writ of *certiorari* and denied *certiorari*. See WALLS v. NORTH CAROLINA, 302 U. S. 635, 82 L. ed. 494.

The North Carolina statutes dealing with selecting the jury and revising the jury lists have been interpreted by the Supreme Court of North Carolina to be directory only and are not mandatory.

State v. Daniels, 134 N.C. 641, 46 S.E. 743;
State v. Banner, 149 N.C. 519, 63 S.E. 84;
State v. Dixon, 131 N.C. 808, 42 S.E. 944.

The case of STATE v. DANIELS, *supra*, has many features similar to this case. In the DANIELS case, the prisoner was indicted for murder and filed a motion to quash upon the grounds of race discrimination. The total population of Jones County at that time was 8,239, of which 4,479 were whites and 3,760 were colored. The jury commissioners failed to put into the jury box 528 eligible colored male citizens, and they likewise failed to put into the jury box the names of about the same number of eligible white citizens. The motion to quash was overruled; and upon appeal to the Supreme Court of North Carolina, it was held that the jury statutes were directory and that the jurors had been selected from an eligible list without discrimination.

We conclude this portion of the argument, therefore, by saying that other than the failure to live up to the directory regulations prescribed by the jury statutes, there has been no discrimination shown on the facts in this case.

II.

THE NORTH CAROLINA STATUTES REGULATING THE SELECTION AND QUALIFICATION OF JURORS ARE CONSTITUTIONAL AND DO NOT VIOLATE THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES. THE CONVICTION OF PETITIONERS BY A PETIT JURY MADE UP AND SELECTED UNDER THESE STATUTES IS VALID AND IS NOT IN VIOLATION OF THE FOURTEENTH AMENDMENT.

In this portion of the argument, the petitioners make two points: that the North Carolina jury statutes establishing the methods of preparing jury lists and setting forth the

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qualifications of jurors are unconstitutional as being a violation of the Fourteenth Amendment; and, second, it is contended that the principles established by this Court as being applicable to the selection and constitution of juries in the Federal Courts should be applied to the State Courts.

The petitioners particularly assail Sections 9-1, 9-2 and 9-3, and likewise Section 9-11 of the General Statutes. It is said that these statutes are discriminatory because poll tax payers include only males between the ages of twenty-one and fifty, because the payment of taxes and the possession of property are made prerequisites for jury service and because talesmen are required to be freeholders. It will be noted that there is nothing in any of these statutes that discriminates against the colored race. There is no mention of race in any of these statutes; and any juror who can meet the qualifications, regardless of race, can serve in the courts of this State. It is tnot unusual for states to require that prospective jurors shall be freeholders, electors, householders, or be of a certain age, have a certain standard of intelligence, moral character, etc. In fact, at common law jurors had to be freeholders. See 31 Am. Jur. (JURY), Sec. 126. Statutes prescribing qualifications for jurors generally and particularly with reference to the qualifications above listed do not infringe against the Fourteenth Amendment. The only thing the statute cannot do is to confine the selection of jurors to a particular race and thus exclude other races or groups. The decisions of the Supreme Court of the United States, dealing with the laws of a particular state as to its jury qualifications, have only nullified those laws or clauses of constitutions which confine jury service to the white race.

Strauder v. West Virginia, 100 U.S. 303, 25 L. ed. 664;
Neal v. Delaware, 103 U.S. 370, 26 L. ed. 567;
Bush v. Kentucky, 107 U.S. 110, 27 L. ed. 354.

The respondent contends, therefore, that if a state statute does not specifically discriminate against colored people, the state has a right to fix qualifications for jurors; and this is not voided by the Fourteenth Amendment.

Franklin v. South Carolina, 218 U.S. 162, 54 L. ed. 980;
Strauder v. West Virginia, 100 U.S. 303, 25 L. ed. 664;
Commonwealth v. Johnson, 78 Ky. 509;
Wood v. Brush, 140 U.S. 278, 35 L. ed. 505;
Bush v. Kentucky, 107 U.S. 110, 27 L. ed. 354;
Gibson v. Mississippi, 162 U.S. 565, 40 L. ed. 1075;
31 Am. Jur. (Jury), Sections 53; 126;
Miller v. Commonwealth, 105 S.W. 899 (Ky.).

One quotation from STRAUDER v. WEST VIRGINIA, *supra*, we think will be sufficient on this question:

> "We do not say that, within the limits from which it is not excluded by the Amendment, a state may not prescribe the qualifications of its jurors, and in so doing make discriminations. It may confine the selection to males, to freeholders, to citizens, to persons within certain ages, or to persons having educational qualifications. We do not believe the 14th Amendment was ever intended to prohibit this. Looking at its history, it is clear it had no such purpose. Its aim was against discrimination because of race or color. As we have said more than once, its design was to protect an emancipated race, and to strike down all possible legal discriminations against those who belong to it."

The petitioners admit that the principles established by this Court in the above cited cases do permit state require-

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ments of property ownership and tax payments and other eligibility conditions for jury service. On page 39 of petitioners' brief, it is said:

> "While it is true that earlier decisions of this Court have apparently recognized State requirements of property ownership, tax payments, etc. as constitutional conditions precedent to jury service, yet it is submitted that present considerations call for re-examination of these disqualifying provisions."

The petitioners, however, in a rather indirect fashion, ask this Court to overrule their former decisions on this subject; and after discussing cases cited which deal with Federal juries, they ask this Court certain questions on page 42 of their brief which, in essence, are a polite challenge to this Court to establish the same uniform rule in all the states which will conform with the Federal rule.

The petitioners particularly rely upon the cases of THIEL v. SOUTHERN PACIFIC CO., 228 U.S. 217, 90 L. ed. 1181; GLASSER v. UNITED STATES, 315 U.S. 60, 86 L. ed. 680 and BALLARD v. UNITED STATES, 91 L. ed, 195 (No. 3, Advance Opinions) and contend that the North Carolina statutes are unconstitutional because they are not in conformity with the principles decided in these cases.

The THIEL case dealt with the systematic exclusion of daily wage earners from a jury list. The case came to this Court on *certiorari* to review a judgment of the Circuit Court of Appeals for the Ninth Circuit, affirming a judgment of the District Court of the United States for the Northern District of California. The 14th Amendment was not involved in the case. This Court ordered the jury panels stricken out in the exercise of its power of supervision over the administration fojustice in the Federal Courts. This Court specifically said:

> "It follows that we cannot sanction the method by which the jury panel was formed in this case. The trial court should have granted petitioner's motion to strike the panel. That conclusion requires us to reverse the judgment below in the exercise of our power of supervision over the administration of justice in the Federal courts. See McNABB v. UNITED STATES, 318 U.S. 332, 340, 87 L. ed. 819, 823, 63 S. Ct. 608."

That no constitutional issue was at stake is specifically set forth in the dissenting opinion of Mr. Justice Frankfurter, who specifically stated: "No constitutional issue is at stake. The problem is one of judicial administration." We submit, therefore, that this case is no authority at all on the question of the constitution of state juries under the Fourteenth Amendment.

The case of GLASSER v. UNITED STATES, 315 U.S. 60, 86 L. ed. 680, which is again a case which came up from a Federal District Court and deals with the constitution of juries in the Federal Court and not the constitution of juries in a state wherein the Fourteenth Amendment is invoked. The improper constitution of the trial jury was not controverted by any affidavits or form of denial. There was, therefore, no constitutional question involved. All of the rules about a "cross-section of the community" were laid down for the guidance of the Federal Courts and officials in selecting jurors.

That there were no constitutional questions under the Fourteenth Amendment involved in these cases is plainly shown in the BALLARD case, *supra*, where this Court said:

> "Put the matter another way, Congress has referred to state law to determine who is qualified to act as a juror. Whether the method of selecting a jury in the Federal Courts from those qualified is or is not proper is a question of Federal law."

The reason given for setting aside the decision of the lower Federal Court in the BALLARD case is as follows:

> "We conclude that the purposeful and systematic exclusion of women from the panel in this case was a departure from the scheme of jury selection which Congress adopted and that, as in the THIEL case, we should exercise our power of supervision over the administration of justice in the Federal Courts, McNABB v. U. S. (U.S.), *supra*, to correct an error which permeated this proceeding."

It will be noted that all of these cases cited by the petitioners depend upon the authority of McNABB v. U. S., 318 U.S. 332, 87 L. ed. 819. In the McNABB case, this Court was careful to point out the distinction between reviewing convictions in state courts in the light of the Fourteenth Amendment and convictions in the Federal Courts wherein judicial supervision can be exercised aside from the Fourteenth Amendment. To make this distinction clear, this Court said, in the McNABB case:

> "In the view we take of the case, however, it becomes unnecessary to reach the constitutional issue pressed upon us. For, while the power of this Court to undo convictions in state courts is limited to the enforcement of those 'fundamental principles of liberty and justice,' HEBERT v. LOUISIANA, 272 U. S. 312, 316, 71 L. ed. 270, 272, 47 S. Ct. 103, 48 ALR 1102, which are secured by the Fourteenth Amendment, the scope of our reviewing power over convictions brought here from the Federal courts is not confined to ascertainment of constitutional validity. Judicial supervision of the administration of criminal justice in the Federal courts implies the duty of establishing and maintaining civilized standards of procedure and evidence. Such standards are not satisfied merely by observance of those minimal historic safeguards for

securing trial by reason which are summarized as 'due process of law' and below which we reach what is really trial by force. Moreover, review by this Court of state action expressing its notion of what will best further its own security in the administration of criminal justice demands appropriate respect for the deliberative judgment of a state in so basic an exercise of its jurisdiction. Considerations of large policy in making the necessary accommodations in our Federal system are wholly irrelevant to the formulation and application of proper standards for the enforcement of the Federal criminal law in the Federal courts."

The freedom of the various states, within reasonable limits, to establish their own methods and procedures in establishing jury lists and in the selection of the jury is again affirmed in FAY v. NEW YORK, 91 L. ed. 1517, 1531, where this Court said:

"These defendants rely heavily on arguments drawn from our decisions in Glasser v. United States, 315 US 60, 86 L ed 680, 62 S Ct 457; Thiel v. Southern P. Co., 328 US 217, 90 L ed 1181, 66 S Ct 984, 166 ALR 1412, and Ballard v. United States, 329 US 187, ante, 195, 67 S Ct 261. The facts in the present case are distinguishable in vital and obvious particulars from those in any of these cases. But those decisions were not constrained by any duty of deference to the authority of the State over local administration of justice. They delt only with juries in federal courts. Over federal proceedings we may exert a supervisory power with greater freedom to reflect our notions of good policy than we may constitutionally exert over proceedings in state courts, and these expressions of policy are not necessarily embodied in the concept of due process. * * * *

"The function of this federal Court under the Fourteenth Amendment in reference to state juries is not to prescribe procedures but is essentially to protect

the integrity of the trial process by whatever method the state sees fit to employ. No device, whether conventional or newly devised, can be set up by which the judicial process is reduced to a sham and courts are organized to convict. They must be organized to hear, try and determine on the evidence and the law. But beyond requiring conformity to standards of fundamental fairness that have won legal recognition, this Court always has been careful not so to interpret this amendment as to impose uniform procedures upon the several states whose legal systems stem from diverse sources of law and reflect different historical influences.

"We adhere to this policy of self-restraint and will not use this great centralizing Amendment to standardize administration of justice and stagnate local variations in practice."

Respondent, the State of North Carolina, contends, therefore, that the petitioners have not been denied any of their constitutional rights as guaranteed by the Fourteenth Amendment of the United States Constitution in the administration of the jury system in Forsyth County, where petitioners were tried; that the jury statutes of North Carolina are constitutional and valid and that the opinion of the Supreme Court of North Carolina should be affirmed.

Respectfully submitted,

HARRY MCMULLAN,
Attorney General of
North Carolina
RALPH MOODY,
Assistant Attorney General
JAMES E. TUCKER,
Assistant Attorney General
Counsel for the State of
North Carolina, Respondent.

APPENDIX

Chapter 9, General Statutes of North Carolina — Jury

SEC. 9-1. *Jury list from taxpayers of good character.*—The board of county commissioners for the several counties at their regular meeting on the first Monday in June, in the year nineteen hundred and five, and every two years thereafter, shall cause their clerks to lay before them the tax returns of the preceding year for their county, from which they shall proceed to select the names of all such persons as have paid all the taxes assessed against them for the preceding year and are of good moral character and of sufficient intelligence. A list of the names thus selected shall be made out by the clerk of the board of commissioners and shall constitute the jury list, and shall be preserved as such.

SEC. 9-2. *Names on list put in box.*—The commissioners at their regular meeting on the first Monday in July in the year nineteen hundred and five, and every two years thereafter, shall cause the names on their jury list to be copied on small scrolls of paper of equal size and put into a box procured for that purpose, which must have two divisions marked No. 1 and No. 2, respectively, and two locks, the key of one to be kept by the sheriff of the county, the other by the chairman of the board of commissioners, and the box by the clerk of the board.

SEC. 9-3. *Manner of drawing panel for term from box.*—At least twenty days before each regular or special term of the superior court, the board of commissioners of the county shall cause to be drawn from the jury box out of the partition marked No. 1, by a child not more than ten years of age, thirty-six scrolls except when the term of court is

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for the trial of civil cases exclusively, when they need not draw more than twenty-four scrolls. The persons whose names are inscribed on said scrolls shall serve as jurors at the term of the superior court to be held for the county ensuing such drawing, and for which they are drawn. The scrolls so drawn to make the jury shall be put into the partition marked No. 2. The said commissioners shall at the same time and in the same manner draw the names of eighteen persons who shall be summoned to appear and serve during the second week, and a like number for each succeeding week of the term of said court, unless the judge thereof shall sooner discharge all jurors from further service. The said commissioners may, at the same time and in the same manner, draw the names of eighteen other persons, who shall serve as petit jurors for the week for which they are drawn and summoned. The trial jury which has served during each week shall be discharged by the judge at the close of said week, unless the said jury shall be then actually engaged in the trial of a case, and then they shall not be discharged until the trial is determined.

SEC. 9-4. *Local modifications as to drawing panel.*— * * * * In Forsyth county the board of county commissioners is authorized and empowered to draw as jurors from the box, as provided in the preceding section, an additional number of jurors to those now provided by law. At all civil terms, regular and special, for the first week, thirty jurors shall be drawn and summoned, and likewise for the second week. At all criminal terms, regular and special, for the first week forty-two jurors shall be drawn and summoned.

For the second week thirty jurors shall be drawn and summoned.

SEC. 9-6. *Jurors having suits pending.*—If any of the jurors drawn have a suit pending and at issue in the superior court, the scrolls with their names must be returned into partition No. 1 of the jury box.

SEC. 9-7. *Disqualified persons drawn.*—If any of the persons drawn to serve as jurors are dead, removed out of the county, or otherwise disqualified to serve as jurors, the scrolls with the names of such persons must be destroyed, and in such cases other persons shall be drawn in their stead.

SEC. 9-8. *How drawing to continue.*—The drawing out of partition marked No. 1 and putting the scrolls drawn into partition No. 2 shall continue until all the scrolls in partition No. 1 are drawn out, when all the scrolls shall be returned into partition No. 1 and drawn out again as herein directed.

SEC. 9-9. *Drawing when commissioners fail to draw.*—If the commissioners for any cause fail to draw a jury for any term of the superior court, regular or special, the sheriff of the county and the clerk of the commissioners, in the presence of and assisted by two justices of the peace of the county, shall draw such jury in the manner above prescribed; and if a special term continues for more than two weeks, then for the weeks exceeding two a jury or juries may be drawn as in this section provided.

SEC. 9-10. *Summons to jurors drawn; to attend until discharged.*—The clerk of the board of county commissioners shall, within five days from the drawing, deliver the list of jurors drawn for the superior court to the sheriff of the county, who shall summon the persons therein named to attend as jurors at such court. The summons shall be served, personally, or by leaving a copy thereof

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at the house of the juror, at least five days before the sitting of the court to which he may be summoned. Jurors shall appear and give their attendance until duly discharged.

SEC. 9-11. *Summons to talesmen; their disqualifications.*—That there may not be a defect of jurors, the sheriff shall by order of the court summon, from day to day, of the bystanders, other jurors, being freeholders, within the county where the court is held, or the judge may, in his discretion, at the beginning of the term direct the tales jurors to be drawn from the jury box used in drawing the petit jury for the term in the presence of the court; such tales jurors so drawn to be summoned by the sheriff and to serve on the petit jury, and on any day the court may discharge those who have served the preceding day. The judge may, upon his own motion, or upon the request of counsel for either plaintiff or defendant, instruct the sheriff to summon such jurors outside of the courthouse. It is a disqualification and ground of challenge to any tales juror that such juror has acted in the same court as grand, petit or tales juror within two years next preceding such term of court.

SEC. 9-12. *How talesmen summoned when sheriff interested.*—When, in the trial of any action before a jury, the sheriff of the county in which the case is to be tried is a party to or has any interest in the action, or when the presiding judge finds upon investigation that the sheriff of the county is not a suitable person, on account of indirect interest in or relative to the cause of action, to be entrusted with the summoning of the tales jurors in any particular case pending, such judge shall appoint some suitable person to summon the jurors in place of the sheriff.

SEC. 9-13. *Penalty for disobeying summons.* — Every

person on the original venire summoned to appear as a juror who fails to give his attendance until duly discharged shall forfeit and pay for the use of the county the sum of twenty dollars, to be imposed by the court; but each delinquent juryman shall have until the next succeeding term to make his excuse for his nonattendance, and, if he renders an excuse deemed sufficient by the court, he shall be discharged without costs. Every person summoned of the bystanders who shall not appear and serve during the day as a juror shall be fined in the sum of two dollars, unless he can show sufficient cause to the court; and the clerk shall forthwith issue an execution against the estate of the delinquent tales juror for such amercement and costs.

SEC. 9-14. *Jury sworn; judge decides competency.*—The clerk shall, at the beginning of the court, swear such of the petit jury as are of the original panel, to try all civil cases; and if there should not be enough of the original panel the talesmen shall be sworn. The petit jurors of the original panel, as well as talesmen, shall be sworn as prescribed in the chapter entitled Oaths. Nothing herein shall be construed to disallow the usual challenges in law to the whole jury so sworn or to any of them; and if by reason of such challenge, any juror is withdrawn, his place on the jury shall be supplied by any of the original venire, or from the bystanders qualified to serve as jurors. The judge or other presiding officer of the court shall decide all questions as to the competency of jurors in both civil and criminal actions.

SEC. 9-15. *Questioning jurors without challenge.*—The court, or any party to an action, civil or criminal, shall be allowed, in selecting the jury to make inquiry as to the fitness and competency of any person to serve as a juror,

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without having such inquiry treated as a challenge of such person, and it shall not be considered by the court that any person is challenged as a juror until the party shall formally state that such person is so challenged.

SEC. 9-16. *Causes of challenge to juror drawn from box.*—It shall not be a valid cause of challenge that a juror called from those whose names are drawn from the box is not a freeholder or has served upon the jury within two years prior to the court at which the case is tried or has not paid the taxes assessed against him during the preceding two years. In other respects the cause of challenge shall be the same as now provided by law, and nothing herein shall modify any law authorizing jurors to be summoned from counties other than the county of trial.

SEC. 9-17. *Jurors impaneled to try case furnished with accommodations.*—When a jury, impaneled to try any cause, is put in charge of an officer of the court, the said officer shall furnish said jury with such accommodation as the court may order, and the same shall be paid for by the party cast or by the county, under the order and in the discretion of the judge of the court.

SEC. 9-18. *Exemption from civil arrest.*—No sheriff or other officer shall arrest under civil process any juror during his attendance on or going to and returning from any court of record. All such service shall be void, and the defendant on motion shall be discharged.

SEC. 9-24. *How grand jury drawn.*—The judges of the superior court, at the terms of their courts, except those terms which are for the trial of civil cases exclusively, and special terms for which no grand jury has been ordered, shall direct the names of all persons returned as jurors to be written on scrolls of paper and put into a box or hat and

drawn out by a child under ten years of age; whereof the first eighteen drawn shall be a grand jury for the court; and the residue shall serve as petit jurors for the court.

SEC. 9-26. *Exceptions for disqualifications.* — All exceptions to grand jurors for and on account of their disqualifications shall be taken before the jury is sworn and impaneled to try the issue, by motion to quash the indictment, and if not so taken, the same shall be deemed to be waived. But no indictment shall be quashed, nor shall judgment thereon be arrested, by reason of the fact that any member of the grand jury finding such bills of indictment had not paid his taxes for the preceding year, or was a party to any suit pending and at issue.

SEC. 105-341. *Levy of poll tax.*—(1) There shall be levied by the board of county commissioners in each county a tax of two dollars ($2.00) on each taxable poll or male person between the ages of twenty-one and fifty years, and the taxes levied and collected under this section shall be for the benefit of the public school fund and the poor of the county. * * * * *

SUPREME COURT OF THE UNITED STATES

Nos. 292–296.—October Term, 1947.

John Henry Brunson, Petitioner,
292 v.
State of North Carolina, Respondent.

Essie King, Petitioner,
293 v.
State of North Carolina, Respondent.

Martha Jones, Petitioner,
294 v.
State of North Carolina, Respondent.

Louise James (Alias Moore), and Evelyn Childs, Petitioners,
295 v.
State of North Carolina, Respondent.

Lida Mae Watkins, Celia Ann Purcell, James Edward Sturdivant, and Louvenia Wallace, Petitioners,
296 v.
State of North Carolina, Respondent.

On Writs of Certiorari to the Supreme Court of the State of North Carolina.

[March 15, 1948.]

Per Curiam.

Reversed. *Strauder* v. *West Virginia*, 100 U. S. 303; *Ex parte Virginia*, 100 U. S. 339; *Neal* v. *Delaware*, 103 U. S. 370; *Carter* v. *Texas*, 177 U. S. 442; *Rogers* v. *Alabama*, 192 U. S. 226; *Norris* v. *Alabama*, 294 U. S. 587; *Hollins* v. *Oklahoma*, 295 U. S. 394; *Hale* v. *Kentucky*, 303 U. S. 613; *Pierre* v. *Louisiana*, 306 U. S. 354; *Smith* v. *Texas*, 311 U. S. 128; *Hill* v. *Texas*, 316 U. S. 400; *Patton* v. *Mississippi*, 332 U. S. 463.